

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joseph Hennessy	Team: Squad #12	CCRB Case #: 202100719	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> O.L.	<input type="checkbox"/> U.S. <input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/28/2021 11:18 PM	Location of Incident: 2185 Pacific Street	18 Mo. SOL 7/28/2022	Precinct: 73		
Date/Time CV Reported Mon, 02/01/2021 10:28 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 02/01/2021 10:28 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Samuel Hui	3588	953978	073 PCT
2. POF Nadia Thomas	22193	962839	073 PCT
3. POM Justin Vazquez	25942	964335	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Samuel Hui	Abuse: Sergeant Samuel Hui stopped § 87(2)(b)	
B.SGT Samuel Hui	Force: Sergeant Samuel Hui used physical force against § 87(2)(b)	
C.POM Justin Vazquez	Force: Police Officer Justin Vazquez used physical force against § 87(2)(b)	
D.POM Justin Vazquez	Force: Police Officer Justin Vazquez used physical force against § 87(2)(b)	
E.POM Justin Vazquez	Force: Police Officer Justin Vazquez used physical force against § 87(2)(b)	
F.SGT Samuel Hui	Abuse: Sergeant Samuel Hui frisked § 87(2)(b)	
G.POM Justin Vazquez	Abuse: Police Officer Justin Vazquez frisked § 87(2)(b)	
H.POF Nadia Thomas	Abuse: Police Officer Nadia Thomas frisked § 87(2)(b)	
I.POF Nadia Thomas	Abuse: Police Officer Nadia Thomas searched § 87(2)(b)	
J.SGT Samuel Hui	Abuse: Sergeant Samuel Hui searched § 87(2)(b)	
K.SGT Samuel Hui	Discourtesy: Sergeant Samuel Hui spoke discourteously to § 87(2)(b)	
L.SGT Samuel Hui	Discourtesy: Sergeant Samuel Hui acted discourteously toward § 87(2)(b)	

Case Summary

On February 1, 2021, § 87(2)(b) filed this complaint by phone with the CCRB on behalf of his 25-year-old son § 87(2)(b).

On January 28, 2021, at approximately 11:18 p.m., § 87(2)(b) son, § 87(2)(b) was inside of Mosheer Tower Plaza Deli, located at 2185 Pacific Street in Brooklyn. Sgt. Samuel Hui, Officer Justin Vazquez, and Officer Nadia Thomas entered the store. Sgt. Hui said to § 87(2)(b) “Didn’t I tell you to come here?” (**Allegation A: Abuse of Authority**, § 87(2)(g)). Sgt. Hui reached towards § 87(2)(b) and grabbed § 87(2)(b) left arm (**Allegation B: Force**, § 87(2)(g)) and Officer Vazquez grabbed § 87(2)(b) right arm (**Allegation C: Force**, § 87(2)(g)). § 87(2)(b) twisted § 87(2)(b) fingers (**Allegation D: Force**, § 87(2)(g)) and pushed him against a door (**Allegation E: Force**, § 87(2)(g)). Sgt. Hui patted up and down the left side of § 87(2)(b) body (**Allegation F: Abuse of Authority**, § 87(2)(g)) and Officer Vazquez patted up and down on the right side of § 87(2)(b) body (**Allegation G: Abuse of Authority**, § 87(2)(g)). Officer Thomas frisked the outside of § 87(2)(b) hooded sweatshirt pockets (**Allegation H: Abuse of Authority**, § 87(2)(g)). Officer Thomas searched inside of § 87(2)(b) pockets (**Allegation I: Abuse of Authority**, § 87(2)(g)). Sgt. Hui ordered Officer Thomas to search inside of § 87(2)(b) pockets (**Allegation J: Abuse of Authority**, § 87(2)(g)). A bag of what § 87(2)(b) identified as cannabidiol was located. Sgt. Hui said to § 87(2)(b) “Fucking fight me over a bag of weed?” (**Allegation K: Discourtesy**, § 87(2)(g)). Sgt. Hui threw the bag at a refrigerated deli window (**Allegation L: Discourtesy**, § 87(2)(g)).

The investigation obtained BWC footage from Sgt. Hui (BR08; summarized in BR17), Officer Thomas (BR09; summarized in BR17) and Officer Vazquez (BR10; summarized in BR17) that captured parts of the incident. The investigation also obtained surveillance footage of the incident recorded by Mosheer Tower Plaza Deli and provided to the investigation by § 87(2)(b) (BR11; summarized in BR18).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Samuel Hui stopped § 87(2)(b)

§ 87(2)(b) was interviewed by the CCRB on February 9, 2021 (BR01). On January 28, 2021, at time reported as 11:00 p.m., but identified by the investigation as approximately 11:18 p.m., § 87(2)(b) exited a vehicle on Thomas S Boyland Street in Brooklyn and walked past the front of the car. § 87(2)(b) pulled up his sweatpants, which had sagged while he was seated in the vehicle. § 87(2)(b) crossed Thomas S Boyland Street and opened the door to Mosheer Tower Plaza Deli, located at 2185 Pacific Street. As he opened the door to the store, § 87(2)(b) heard a voice behind him say, “Hey, come here.” § 87(2)(b) looked behind him and saw a pale, mask-less face looking at him from the open passenger window of a black car. § 87(2)(b) walked into the store and made a purchase. § 87(2)(b) turned around and saw three officers. These three officers were identified by the investigation as Sergeant Samuel Hui, Officer Justin Vazquez, and Officer Nadia Thomas. Sgt. Hui walked to about one foot from § 87(2)(b) made eye contact with § 87(2)(b) and said, “Didn’t I tell you to come here?” § 87(2)(b) recognized him as the individual who had previously said, “Hey, come here.”

Sgt. Samuel Hui was interviewed at the CCRB on March 23, 2021 (BR02). On January 27, 2021, Sgt. Hui observed § 87(2)(b) standing next to the front passenger door of a parked car across the street from 2185 Pacific Street. Sgt. Hui was seated in the driver seat of an unmarked police vehicle. § 87(2)(b) adjusted his waistband by grabbing an object that was in his front waistband /

stomach area, slightly to the right of the middle of his body and pushing the object downward. Sgt. Hui had not made any prior observations. An object that Sgt. Hui believed was a firearm was around § 87(2)(b) front waistband area slightly to the right of center. The object was roughly handgun sized. The object was L-shaped. Sgt. Hui believed that this item was a handgun. § 87(2)(b) entered 2185 Pacific Street, and Sgt. Hui, Officer Thomas and Officer Vazquez exited their unmarked police vehicle and walked into the store. After opening the door to the deli, Sgt. Hui told § 87(2)(b) not to move and to put his hands up. Sgt. Hui indicated to § 87(2)(b) to stop because he thought that § 87(2)(b) was armed with a gun.

Sgt. Hui's memo book entry from 11:18 p.m. on January 27, 2021 (BR05) reads as follows: "Officers observed male leaving vehicle adjusting waistband and observed the outline of a gun in the proximity of his front right waistband and hoodie pocket. As officers attempted to frisk the area, male immediately clenched on to said area. Ufi, cell phone and two large bags of marijuana were recovered. Contact card offered"

Officer Justin Vazquez was interviewed at the CCRB on March 30, 2021 (BR03). On January 27, 2021, at approximately 11:18pm, Officer Vazquez was with Sgt. Hui and Officer Thomas in an unmarked police vehicle that was driving northbound on Thomas S Boyland Street towards Pacific Street. Either Officer Thomas or Sgt. Hui alerted Officer Vazquez of an individual – identified by the investigation as § 87(2)(b) – in the immediate area that might have had a gun in his waistband area. Officer Vazquez did not remember what specifically was said or why officers believed that § 87(2)(b) had a gun in his waistband area. Officer Vazquez first noticed § 87(2)(b) as he was entering a deli. Officer Vazquez did not see anything on § 87(2)(b) person when § 87(2)(b) was outside of the store that led him to think that § 87(2)(b) might have been armed. All three officers exited the vehicle. Sgt. Hui approached § 87(2)(b) and moved towards § 87(2)(b) waistband.

Officer Vazquez's memo book entry from 11:18 p.m. on January 27, 2021 (BR06) notes the following: "Officers observed male leaving vehicle adjusting waistband and observed the outline of a gun in the proximity of his front right waistband and hoodie pocket. As officers attempted to frisk the area, male immediately clenched on to said area. UFI cell phone two large bags of marijuana were recovered. Contact card offered by Sgt. Hui. 91, stop report § 87(2)(b)"

Officer Nadia Thomas was interviewed at the CCRB on March 30, 2021 (BR04). On January 27, 2021, at approximately 11:18 p.m., Officer Thomas stated that she observed the side profile of § 87(2)(b) who appeared to have just stepped out of or was getting into a car. § 87(2)(b) looked left, right, and behind his back in a manner that Officer Thomas perceived as nervous. Officer Thomas saw his hands manipulate the right side of his body in the waistband area in a stuffing, pushing downwards motion. That motion, in conjunction with Sgt. Hui voicing a concern about the individual, made Officer Thomas believe that § 87(2)(b) may have been handling a firearm. Sgt. Hui said something to the effect of "He might have a gun." Sgt. Hui did not elaborate on why he believed that or what he saw that made him believe that § 87(2)(b) might have had a firearm. Officer Thomas ultimately searched § 87(2)(b) and recovered a cell phone and marijuana.

Officer Thomas's memo book entry from 11:18 p.m. on January 27, 2021 (BR07) contains the following notation: "Officers observed male leaving vehicle adjusting waistband and observed the outline of a gun in the proximity of his front right waistband and hoodie pocket. As officers attempted to frisk the area, male immediately clenched on to said area. Ufi, cell phone and two large bags of marijuana were recovered; contact card offered by Sgt. Hui; 91."

BWC footage does not depict § 87(2)(b) actions outside of Mosheer Tower Plaza Deli. Officer

Thomas's BWC footage (BR09) shows that she was sitting in the front passenger seat of the police vehicle when this incident began.

Surveillance footage does not depict § 87(2)(b) actions outside of Mosheer Tower Plaza Deli.

In People v. Haynes, 115 A.D.3d 676 (BR12), the courts held that a "defendant's 'grabb[ing]' of his 'waistband area' in such a way that it '[s]eemed' to the detectives that the defendant 'had a bulge or something heavy that he was holding on the outside of his garments,' did not constitute specific circumstances indicative of criminal activity so as to establish the reasonable suspicion that was necessary to lawfully pursue the defendant."

Sgt. Hui cited two reasons for his stop of § 87(2)(b). First, he observed § 87(2)(b) adjust his waistband by grabbing an object that was in his front waistband / stomach area slightly to the right of the middle of his body and by pushing the object downward. Second, that after this initial observation, he observed an object at § 87(2)(b) front waistband area slightly to the right of center. Sgt. Hui described the object as being L-shaped and the size of a handgun and stated that he believed this item to be a firearm.

The investigation determined that § 87(2)(b) adjusted his waistband because he provided testimony to the CCRB confirming that he performed this action. Further, this action was also corroborated by the testimony of Officer Thomas.

§ 87(2)(g)

§ 87(2)(b) No other officer testified that they saw an L-shaped object in § 87(2)(b) waistband. Further, no object matching this description was ultimately recovered from § 87(2)(b)

§ 87(2)(g)

It is undisputed that § 87(2)(b) adjusted his waistband with his hands after he exited a vehicle near 2185 Pacific Street. § 87(2)(g)

§ 87(2)(g)

Allegation (B) Force: Sergeant Samuel Hui used physical force against § 87(2)(b)

§ 87(2)(b) reported that after Sgt. Hui told him to stop, Sgt. Hui said, "He's reaching." At the time, § 87(2)(b) had his hands at his side. Sgt. Hui grabbed § 87(2)(b) left arm and Officer Vazquez grabbed his right arm. Officer Vazquez bent § 87(2)(b) right arm up against his back and bent the fingers on his right hand. Sgt. Hui and Officer Vazquez pushed § 87(2)(b) against a door that was two or three feet to the right of the store clerk's window. § 87(2)(b) back was to the door. Sgt. Hui patted up and down the left side of § 87(2)(b) body and Officer Vazquez patted the right side.

In his CCRB statement, Sgt. Hui stated that when he approached § 87(2)(b) in the store, § 87(2)(b) pushed his arms down towards his waistband. This pushing motion made Sgt. Hui concerned for his safety because he thought that § 87(2)(b) was reaching for a gun. He believed that § 87(2)(b)

§ 87(2)(b) was armed due to his observations of § 87(2)(b) while outside of the store; nothing that Sgt. Hui observed inside the store added to his belief that § 87(2)(b) was armed. Sgt. Hui believed that by reaching towards his waistband § 87(2)(b) escalated the situation. Sgt. Hui decided that he had to control § 87(2)(b) hands. To control § 87(2)(b) hands, Sgt. Hui grabbed § 87(2)(b) left hand with both of his hands.

Sgt. Hui recorded Body Worn Camera (BWC) footage of this interaction (BR08). At 01min01sec into the recording, Sgt. Hui enters Mosheer Tower Plaza Deli. Sgt. Hui says to § 87(2)(b) “I told you to stop, man, hold on a second. Keep your hands up.” Sgt. Hui reaches for § 87(2)(b) left arm with his right arm and holds his arm. The footage does not depict § 87(2)(b) moving his arms or taking any physical action in response to Sgt. Hui’s statements. After Sgt. Hui reaches for § 87(2)(b) § 87(2)(b) moves or is moved by something backwards so that his back makes contact with the counter.

Officer Thomas recorded BWC footage of this interaction (BR09). At 00min56s into the recording, Sgt. Hui reaches towards § 87(2)(b) body in front of the deli counter. The bodies of Sgt. Hui and Officer Vazquez obstruct the cameras view of § 87(2)(b) so it is unclear if § 87(2)(b) moves his hands, arms, or body in the moments before Sgt. Hui made physical contact with him.

Officer Vazquez recorded BWC footage of this interaction (BR10). At 01min08sec in his BWC footage, Officer Vazquez enters the deli. Officer Vazquez’s BWC is not facing § 87(2)(b) or Sgt. Hui, so it is unclear if § 87(2)(b) moves his hands, arms, or body in the moments before Sgt. Hui made physical contact with him.

Security camera footage was received from complainant § 87(2)(b) who received the footage from Mosheer Tower Plaza Deli (BR11). The file was recorded in color and contains no audio. At 00m12sec into the recording, Sgt. Hui opens the door to the store, walks towards § 87(2)(b) and grabs his left arm with his right arm in the span of 4 seconds. § 87(2)(b) does not reach towards his waistband with either arm in the time between when Sgt. Hui enters the store and when Sgt. Hui makes physical contact with § 87(2)(b).

Patrol Guide Procedure 221-01 (Board Review 22) explains that officers are permitted to use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain compliance from a subject to reduce or eliminate the necessity to use force.

It is undisputed that Sgt. Hui grabbed § 87(2)(b) left arm after he entered Mosheer Tower Plaza Deli. Sgt. Hui stated as he approached § 87(2)(b) § 87(2)(b) pushed his arms down towards his waistband. This, in conjunction with Sgt. Hui’s observations of § 87(2)(b) outside of Mosheer Tower Plaza Deli, made Sgt. Hui concerned that § 87(2)(b) was reaching for a gun. For these reasons, Sgt. Hui reached towards § 87(2)(b) and grabbed his arms. Sgt. Hui did not articulate any other reason as to why he grabbed § 87(2)(b) arms. As per Sgt. Hui’s BWC footage and the security camera footage from inside Mosheer Tower Plaza Deli, the investigation concluded that § 87(2)(b) did not perform the reaching action that Sgt. Hui alleged.

Sgt. Hui stated that he used force against § 87(2)(b) by grabbing his arm because he believed that § 87(2)(b) was armed and was escalating the situation, which would have created a need for Sgt. Hui to ensure the safety of himself, the other officers, and any civilians in the vicinity from a

potential firearm discharge. § 87(2)(g)

Allegation (C) Force: Police Officer Justin Vazquez used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Justin Vazquez used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Justin Vazquez used physical force against § 87(2)(b)

As stated earlier, § 87(2)(b) reported that after Sgt. Hui told him to stop, Sgt. Hui said, “He’s reaching.” At the time, § 87(2)(b) had his hands at his side. Sgt. Hui grabbed § 87(2)(b) left arm and Officer Vazquez grabbed his right arm. Officer Vazquez bent § 87(2)(b) right arm up against his back and bent the fingers on his right hand. Sgt. Hui and PO Vazquez pushed § 87(2)(b) against a door that was two or three feet to the right of the store clerk’s window. § 87(2)(b) back was to the door.

As noted in Allegation A, Officer Vazquez stated that an officer – he could not recall if it was Sgt. Hui or Officer Thomas – stated that § 87(2)(b) had a gun in his waistband area, though he did not remember what specifically was said or why the officer believed this. Officer Vazquez did not see anything on § 87(2)(b) person when § 87(2)(b) was outside of the store that led him to think that § 87(2)(b) might have been armed. As the officers approached § 87(2)(b) Sgt. Hui walked over to § 87(2)(b) and moved towards his waistband. § 87(2)(b) leaned backwards and moved away from officers and reached down towards and held onto his waistband area. Sgt. Hui stated, “He’s reaching.” Officer Vazquez then held onto § 87(2)(b) arm to keep him from reaching towards his waistband due to his concern that § 87(2)(b) had a gun. Officer Vazquez did not remember grabbing onto § 87(2)(b) fingers at any point inside of the deli. Officer Vazquez did not push § 87(2)(b) in a way that made his back move against a door in the deli.

As discussed in Allegation A, Officer Thomas reported that Sgt. Hui informed her and Officer Vazquez that § 87(2)(b) might be armed with a gun.

While Officer Vazquez’s BWC footage (BR10) does depict Sgt. Hui’s approach of § 87(2)(b) inside the deli at approximately 1min09sec, and depicts Officer Vazquez reaching for § 87(2)(b) immediately thereafter, the footage does not depict § 87(2)(b) reaching towards his waistband. The footage depicts Officer Vazquez holding § 87(2)(b) hands from 1min18sec to approximately 1min40sec, at which point his grip moves to § 87(2)(b) wrist, but the footage does not depict Officer Vazquez bending any of § 87(2)(b) fingers. The footage does not depict Officer Vazquez pushing § 87(2)(b) into a door.

Officer Thomas’s BWC footage (BR09) does not depict Officer Vazquez bending any of § 87(2)(b) fingers. It does not depict Officer Vazquez push § 87(2)(b) into any door.

Sgt Hui’s BWC footage (BR08) does not depict Officer Vazquez bending any of § 87(2)(b) fingers. It does not depict Officer Vazquez push § 87(2)(b) into any door. At 1min44sec into the footage, Sgt. Hui says to § 87(2)(b) after officers had ceased physical contact with him, “When you came out of the car you adjusted your front like you had a gun on you.”

At 0min53sec into the security footage captured by Mosheer Tower Plaza Deli (BR11), Officer Vazquez is holding § 87(2)(b) right arm with both of his hands. The footage depicts Sgt Hui holding § 87(2)(b) left arm before the two of them move towards a door to the right of the store counter. Officer Vazquez then places his arms around Sgt. Hui, but it is not clear if he is making physical contact with § 87(2)(b) Officer Vazquez’s arms move around near where § 87(2)(b) is,

but § 87(2)(b) body is entirely obstructed, and it is not clear what physical actions Officer Vazquez is taking.

As discussed under Allegation B, Patrol Guide Procedure 221-01 (BR22) governs police use of force.

As § 87(2)(b) and Officer Vazquez both stated that Officer Vazquez held § 87(2)(b) arm inside of Mosheer Tower Plaza Deli, the investigation credits that this did occur.

The investigation credits that in the police vehicle prior to entering Mosheer Tower Plaza Deli, Sgt. Hui did inform Officer Thomas and Officer Vazquez that he believed that § 87(2)(b) had a handgun on his person due to the consistency of Sgt. Hui and Officer Thomas' testimony in this regard and Officer Vazquez's assertion that he learned of this concern from another officer. The investigation also credits that Sgt. Hui informed Officer Vazquez and Officer Thomas that § 87(2)(b) was reaching towards the gun because both § 87(2)(b) and Officer Vazquez testified that Sgt. Hui stated, "He's reaching" as he initiated physical contact with § 87(2)(b).

§ 87(2)(g) Although Officer Vazquez provided testimony that he personally witnessed § 87(2)(b) reach towards his waistband, there was no video or other evidence that might confirm or refute this assertion. Regardless, once Sgt. Hui initiated contact with § 87(2)(b) and stated that § 87(2)(b) was reaching towards the area where he suspected the weapon might be concealed, § 87(2)(g)

Officer Vazquez stated that he did not remember grabbing any of § 87(2)(b) fingers at any point during this interaction. § 87(2)(g)

Officer Vazquez stated that he did not push § 87(2)(b) in a way that made his back move against a door in Mosheer Tower Plaza Deli. § 87(2)(g)

Allegation (F) Abuse of Authority: Sergeant Samuel Hui frisked § 87(2)(b)

As per § 87(2)(b) statement in Allegation B, once Sgt. Hui made physical contact with him, Sgt. Hui patted up and down the left side of § 87(2)(b) body and Officer Vazquez patted the right side.

In his CCRB testimony, Sgt. Hui stated that he did not remember frisking or searching § 87(2)(b)

In her CCRB testimony, Officer Thomas stated that Sgt. Hui was prevented from frisking § 87(2)(b) because § 87(2)(b) reached towards the pocket area of his waistband / hooded sweatshirt.

In his CCRB testimony, Officer Vazquez stated that did not know what Sgt. Hui was doing during the period when § 87(2)(b) alleged Sgt. Hui patted the left side of his body.

Surveillance footage of the incident does not show Sgt. Hui patting down the left side of § 87(2)(b) body. From 00min17sec to 00min24sec in the recording, § 87(2)(b) body and Sgt. Hui's arms are obscured by a shelf in the deli.

In Sgt. Hui's BWC footage, Sgt. Hui's hands are not visible during the period when § 87(2)(b) alleged Sgt. Hui's patting action occurred. Officer Thomas's BWC footage does not show Sgt. Hui's hands during the period when § 87(2)(b) alleged Sgt. Hui's patting action occurred. Officer Vazquez's BWC footage does not show Sgt. Hui's hands during the period when § 87(2)(b) alleged Sgt. Hui's patting action occurred.

§ 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Justin Vazquez frisked § 87(2)(b)

§ 87(2)(b) stated that after he was pushed up against a door to the right of the store clerk's window, Sgt. Hui patted the left side of § 87(2)(b) body and Officer Vazquez patted the right side of § 87(2)(b) body.

Officer Vazquez stated that he did not remember if he patted down any area of § 87(2)(b) while holding his arm.

The security footage captured by Mosheer Tower Plaza Deli (BR11) depicts Officer Vazquez making contact with § 87(2)(b) left leg with his right hand before moving his hand up § 87(2)(b) left leg.

At 1min59sec into Officer Vazquez's BWC footage (BR10), Officer Vazquez's right hand makes physical contact with the outside of § 87(2)(b) left sweatpants pocket and right jacket pocket.

Officer Thomas' BWC (BR09) shows that when the officers approach § 87(2)(b) at approximately 0min55sec in the recording, Officer Thomas enters behind Sgt. Hui and Officer Vazquez. Her vantage point of what § 87(2)(b) does with his hands upon the approach is obscured by the bodies of Sgt. Hui and Officer Vazquez.

NYPD Patrol Guide Procedure 212-11 (BR23) outlines the various circumstances under which a member of the service may stop a civilian. This procedure also explains that a frisk is authorized when an officer reasonably suspects the person is armed and dangerous.

While Officer Vazquez stated that he did not recall whether he patted down § 87(2)(b) both Mosheer Tower Plaza Deli's security footage and his own BWC footage depict him making physical contact with § 87(2)(b) left leg with his right hand. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (H) Abuse of Authority: Police Officer Nadia Thomas frisked § 87(2)(b)

It is undisputed that when § 87(2)(b) went to the ground after Sgt. Hui and Officer Vazquez made physical contact with him, Officer Thomas frisked § 87(2)(b).

Officer Thomas stated that she conducted the frisk of § 87(2)(b) person for the following reasons: While the officers were in their vehicle, she observed § 87(2)(b) exit a vehicle and look around him in a manner she perceived as nervous. She also saw § 87(2)(b) manipulate the right side of his body in the waistband area in a stuffing, downwards pushing motion. Sgt. Hui, who had a better position of § 87(2)(b) told the officers “He might have a gun” but did not elaborate on why he believed this. Once § 87(2)(b) entered the store, Sgt. Hui touched the outer garments of § 87(2)(b) waistband area, but was prevented from frisking this area because § 87(2)(b) reached towards the area. In response, Sgt. Hui said, “He’s reaching.” This motion in combination with Sgt. Hui’s statements and her observations raised Officer Thomas’ suspicion that § 87(2)(b) was armed.

As discussed under Allegation G, Officer Thomas’ BWC footage shows that due to her position, she was unable to see the position of § 87(2)(b) hands when officers entered the deli.

NYPD Patrol Guide Procedure 212-11 (BR23) outlines the various circumstances under which a member of the service may stop a civilian. This procedure also explains that a frisk is authorized when an officer reasonably suspects the person is armed and dangerous.

In People v. Haynes, 115 A.D.3d 676 (BR12), the courts held that a “defendant’s ‘grabb[ing]’ of his ‘waistband area’ in such a way that it ‘[s]eemed’ to the detectives that the defendant ‘had a bulge or something heavy that he was holding on the outside of his garments,’ did not constitute specific circumstances indicative of criminal activity so as to establish the reasonable suspicion that was necessary to lawfully pursue the defendant.”

As discussed in Allegation B, the investigation has determined that § 87(2)(b) did not reach for his waistband or move his arms in between when officers entered Mosheer Towel Plaza Deli and before Sgt. Hui made physical contact with § 87(2)(b).

Officer Thomas’ decision to frisk § 87(2)(b) was based upon a combination of her personal observations and observations made by Sgt. Hui. § 87(2)(g)

Further, Officer Thomas’ observation that § 87(2)(b) looked around in a nervous manner is innocuous. § 87(2)(g)

§ 87(2)(g)

Sgt. Hui informed Officer Thomas and Officer Vazquez that § 87(2)(b) might have a gun and later, upon approaching § 87(2)(b) in the store, Sgt. Hui stated that § 87(2)(b) was reaching his hands towards the area of concern. Officer Thomas was unable to independently verify the validity of Sgt. Hui’s statements about his observations. § 87(2)(g)

§ 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Nadia Thomas searched § 87(2)(b)

It is undisputed that Officer Thomas removed items from pockets on § 87(2)(b) clothing.

As discussed under Allegation H, Officer Thomas frisked § 87(2)(b) due to a belief that he was in possession of a firearm. Officer Thomas stated that when she frisked § 87(2)(b) right hooded sweatshirt pocket area, she felt a hard object that she thought was the handle of a gun. Officer Thomas thought that this object was a gun because of its length and texture. Officer Thomas did not describe what about the length and texture of this object made her believe that it was the handle of a gun. Officer Thomas put her hands in the right pocket of § 87(2)(b) hooded sweatshirt and pulled the object out of § 87(2)(b) pocket. Officer Thomas saw that it was a cell phone. Officer Thomas also pulled out two bags of marijuana. Officer Thomas did not say why she removed the bags of marijuana.

Officer Thomas's BWC footage does not show the pocket area of § 87(2)(b) waistband / hooded sweatshirt in the moments in which Officer Thomas frisks and searches § 87(2)(b)

At 3min21sec into Sgt. Hui's BWC footage (BR08), § 87(2)(b) holds his phone which is an iPhone.

As per Patrol Guide Procedure 212-11, where a frisk reveals an object that a member of the service reasonably suspects may be a weapon, the member of the service may search only those interior portions of the stopped person's clothing to remove the weapon.

NYPD officers are required to carry both a smartphone and a firearm as part of their regular duties. § 87(2)(b) smart phone was in his right hooded sweatshirt pocket, a common place for an individual to carry a smart phone, which is a ubiquitous item that officers would encounter regularly as part of frisks and searches. § 87(2)(g)

Allegation (J) Abuse of Authority: Sergeant Samuel Hui searched § 87(2)(b)

Sgt. Hui stated that sometime after Officer Thomas recovered a quantity of marijuana and a cell phone from the pocket of § 87(2)(b) hooded sweatshirt, he told Officer Thomas to conduct an additional search § 87(2)(b). Besides the outline of the object in § 87(2)(b) hooded sweatshirt pocket / waistband area, § 87(2)(b) pushing his hands towards his waistband when approached by Sgt. Hui, and § 87(2)(b) sitting on the ground and bending his body, there was no additional suggestion that § 87(2)(b) had a gun on his person. Sgt. Hui did not explain why he directed Officer Thomas to conduct a second search of § 87(2)(b) after Officer Thomas had already searched § 87(2)(b).

BWC footage from officers does not depict this search or Sgt. Hui's directions to Officer Thomas

about the search.

As per Patrol Guide Procedure 212-11, where a frisk reveals an object that a member of the service reasonably suspects may be a weapon, the member of the service may search only those interior portions of the stopped person's clothing to remove the weapon.

In People v. Hill, 262 A.D.2d 870 (BR29), the courts noted that even if an officer suspects that a pocket bulge contains a concealed weapon, the suspicion should terminate if the officer determines that the pocket does not contain a weapon. Under these circumstances, any subsequent seizure of the pocket would be impermissible.

Likewise, in People v. Montero, 149 A.D.2d 628 (BR30), the courts noted that once an officer's protective frisk revealed items that were not weapons, any reasonable fear on the part of the officer for their safety abated. "Once the reasonable fear for safety abated, the police officer was required to discontinue his search, and his subsequent seizure of contraband from the defendant's pocket was therefore improper."

At the time that Sgt. Hui directed Officer Thomas to search § 87(2)(b) § 87(2)(b) had already been frisked by at least two officers and searched by one officer in the area of his waistband and sweatshirt pockets – the reported area of concern. During the initial search (addressed under Allegation I), Officer Thomas removed items from § 87(2)(b) pockets. This search revealed the contents of § 87(2)(b) pockets and confirmed that the pockets did not contain any weapons. Given that the results of her initial search eliminated the likelihood of § 87(2)(b) having a firearm on that area of his body, there was no reason for Sgt. Hui to believe that § 87(2)(b) might still possess a gun in this area of his body. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (K) Discourtesy: Sergeant Samuel Hui spoke discourteously to § 87(2)(b)

At 02min15sec into the recording, Sgt. Hui's BWC footage depicts him saying to § 87(2)(b) "Fucking fight me over a bag of weed. Are you serious right now?"

In his CCRB statement, Sgt. Hui stated that he told Officer Thomas to search § 87(2)(b) Sgt. Hui believed that Officer Thomas did search § 87(2)(b) because Sgt. Hui asked her if she "got it" and Officer Thomas said, "There's nothing," which suggested to Sgt. Hui that § 87(2)(b) did not have a gun on his person. Sgt. Hui was satisfied that § 87(2)(b) did not have a gun on his person when Officer Thomas said this. All three officers then disengaged physical contact with § 87(2)(b) During his CCRB interview, Sgt. Hui was shown his own BWC footage from the date and time of the incident, starting with a timestamp of 2:09 for 11 seconds. At this point in the video, officers had physically interacted with § 87(2)(b) and had disengaged physical contact with § 87(2)(b) Sgt. Hui confirmed that it was his voice that can be heard in the video to say, "Fucking fight me over a bag of weed." Sgt. Hui said that he made that statement because he had been fighting a person who he thought had a gun, who Sgt. Hui thought was going to shoot him, and that his adrenaline was pumping.

Patrol Guide Procedure 200-02 requires officers to "render our services with courtesy and civility" (BR13).

In Police Department v. Court (Disciplinary Case No. 79627/04) (BR19), the court references prior decisions, noting “These decisions have consistently concluded that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct.”

Sgt. Hui affirmed that he used discourteous language when speaking with § 87(2)(b) and provided the reason that he did so because his adrenaline was pumping. § 87(2)(g)

§ 87(2)(b) Sgt. Hui’s statement to § 87(2)(b) was not an order, instruction, or attempt to maintain control of the situation. Further, all parties agree that at the time the statement was made, the officers had already determined that § 87(2)(b) was not in possession of a weapon or committing any crime. § 87(2)(g)

Allegation (L) Discourtesy: Sergeant Samuel Hui acted discourteously toward § 87(2)(b)

In his CCRB statement, § 87(2)(b) stated that Sgt. Hui threw a bag of cannabidiol (CBD), a substance that resembles marijuana, at a refrigerated deli window.

In his CCRB statement, Sgt. Hui stated that he did not remember throwing a bag in the store at any point during this interaction. In their testimony to the CCRB, Officer Vazquez and Officer Thomas stated that they did not remember seeing Sgt. Hui throw a bag inside the store.

At 05min33sec in Sgt. Hui’s BWC, Sgt. Hui holds a small plastic bag in his right hand while speaking with § 87(2)(b). Sgt. Hui’s right hand leaves the frame before reentering shortly after, with the plastic bag absent. Concurrently, the sound of a small object making contact with a surface is audible. BWC footage recorded by Officer Thomas and Officer Vazquez did not depict Sgt. Hui throwing the bag.

Sgt. Hui’s BWC footage confirms that Sgt. Hui was holding a bag in his right hand at the period when § 87(2)(b) alleged that Sgt. Hui threw the bag of CBD. Shortly after, Sgt. Hui’s BWC footage shows that his right hand is no longer holding the bag, and BWC audio depicts the sound of a small object making contact with a surface. § 87(2)(g)

Civilian and Officer CCRB Histories

Signature

Print Title & Name

Date